

UNITED STATES DISTRICT COURT

# DISTRICT OF NEVADA

# BOBBY LEE FAIR, JR.,

Case No. 3:20-cv-00460-MMD-CLB

Y

Petitioner,

## ORDER

JUDGE CLIFTON, *et al.*

## Respondents.

10 Petitioner Bobby Lee Fair, Jr., a *pro se* detainee housed at the Washoe County  
11 Detention Center, commenced this action by filing a Petition for Writ of Habeas Corpus  
12 (ECF No. 1-1). This habeas matter is before the Court on consideration of Fair's  
13 Application to Proceed *In Forma Pauperis* (ECF No. 1) as well as initial review under the  
14 Rules Governing Section 2254 Cases.<sup>1</sup> For the reasons discussed below, Fair is ordered  
15 to resolve the filing fee and amend his petition on the approved form by October 2, 2020.<sup>2</sup>

## I. APPLICATION TO PROCEED *IN FORMA PAUPERIS*

17 Pursuant to 28 U.S.C. § 1914(a) and the Judicial Conference Schedule of Fees, a  
18 \$5.00 filing fee is required to initiate a habeas action in a federal district court. Indigent  
19 prisoners who do not have money to pay the \$5.00 filing fee may request permission to  
20 proceed *in forma pauperis* (“IFP”). A prisoner’s IFP application must be submitted on the  
21 Court’s form and include three specific documents: (1) a copy of the prisoner’s inmate trust  
22 account statement for the six-month period prior to filing; (2) a financial certificate signed  
23 by an authorized prison officer; and (3) the prisoner’s financial declaration showing an  
24 inability to prepay fees and costs. See 28 U.S.C. § 1915; LSR 1-1, LSR 1-2.

<sup>1</sup>All references to a “Habeas Rule” or the “Habeas Rules” in this order identify the Rules Governing Section 2254 Cases in the United States District Courts.

<sup>2</sup>Screening and consideration of Fair's Motion for Appointment of Counsel (ECF No. 1-2) are deferred until the filing fee is resolved.

1           Here, Fair has requested IFP status to waive his filing fee. However, he submitted  
2 a hand-written IFP application that does not contain the appropriate financial information  
3 or declaration required by federal law and the Local Rules of Practice. Although Fair may  
4 qualify for IFP status, the Court cannot make that determination because he has not  
5 submitted the correct IFP application, financial information, and declaration. Fair's IFP  
6 application is therefore denied without prejudice, and he has 45 days to submit a new IFP  
7 application or pay the \$5 filing fee.

8           **II. PETITION FOR WRIT OF HABEAS CORPUS**

9           Fair did not file his petition on the appropriate form or in substantial compliance with  
10 the form but, instead, hand-wrote a petition on blank paper. His hand-written petition fails  
11 to disclose the required information. The form is important as it provides the Court with  
12 necessary information to conduct preliminary review of the petition. Accordingly, Fair must,  
13 within 45 days of the date of this order, file an amended petition on the Court's form.<sup>3</sup> In  
14 doing so, Fair is advised to follow the instructions on the form and to refrain from lengthy  
15 legal or factual argument.

16           In addition, the Court notes that Fair's petition appears to seek federal judicial  
17 intervention in a pending state criminal proceeding. The *Younger* abstention doctrine  
18 prevents federal courts from enjoining pending state court criminal proceedings, even if  
19 there is an allegation of a constitutional violation, unless there is an extraordinary  
20 circumstance that creates a threat of irreparable injury. See *Younger v. Harris*, 401 U.S.  
21 37, 53-54 (1971). The United States Supreme Court has instructed that "federal-court  
22 abstention is *required*" when there is "a parallel, pending state criminal proceeding." *Sprint*  
23 *Comm'ns, Inc. v. Jacobs*, 571 U.S. 69, 72 (2013) (emphasis added); *Gilbertson v.*  
24 *Albright*, 381 F.3d 965 (9th Cir. 2004) (stating that federal courts generally abstain from  
25 granting any relief that would interfere with pending state judicial proceedings). Irreparable

---

26  
27           <sup>3</sup>Fair at all times remains responsible for calculating the applicable statute of  
28 limitations. By ordering Fair to amend his petition, the Court makes no finding or  
representation that either the original or amended petition will be considered timely.

1 injury does not exist if the threat to a petitioner's federally protected rights may be  
2 eliminated through his or her defense of the criminal case. See *Younger*, 401 U.S. at 46.

3 A state defendant seeking federal habeas relief to restrain ongoing state criminal  
4 proceedings must fully exhaust his state court remedies before presenting his  
5 constitutional claims to the federal courts. See, e.g., *Arevalo v. Hennessy*, 882 F.3d 763,  
6 764-67 (9th Cir. 2018) (finding that California petitioner properly exhausted his state  
7 remedies by filing two motions in the trial court, a habeas petition in the court of appeal,  
8 and a habeas petition in the state supreme court). The exhaustion requirement ensures  
9 that state courts, as a matter of federal-state comity, will have the first opportunity to review  
10 and correct alleged violations of federal constitutional guarantees. See *Coleman v.*  
11 *Thompson*, 501 U.S. 722, 731 (1991). As a general rule, a federal court will not entertain  
12 a petition seeking intervention in an ongoing state criminal proceeding absent  
13 extraordinary circumstances, even when a petitioner's claims were otherwise fully  
14 exhausted in the state courts. See, e.g., *Sherwood v. Tomkins*, 716 F.2d 632, 634 (9th  
15 Cir. 1983); *Carden v. Montana*, 626 F.2d 82, 83-85 (9th Cir. 1980).

16 Should Fair choose to submit an amended petition, the Court will conduct an initial  
17 evaluation based the *Younger* abstention doctrine and any other applicable legal  
18 standards. If Fair chooses to file a petition, it must allege his claims for relief in short and  
19 plain terms, simply, concisely, and directly. This means Fair should avoid legal jargon and  
20 conclusions. Instead, he should summarize the information he believes to be relevant in  
21 his own words for each claim asserted. Case citations and exhibits are not a substitute for  
22 a proper petition. Fair should specifically identify what constitutional right(s) he believes  
23 were violated.

24 **III. CONCLUSION**

25 It is therefore ordered that Petitioner Bobby Lee Fair, Jr.'s Application to Proceed  
26 *In Forma Pauperis* (ECF No. 1) is denied without prejudice.

27 ///

28 ///

1           It is further ordered that the Clerk of Court will mail Fair one blank copy of the IFP  
2 application form for inmates along with instructions, and one blank copy of the form petition  
3 for a writ of habeas corpus under 28 U.S.C. § 2241 along with instructions.

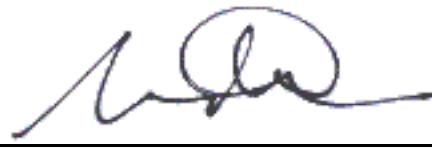
4           It is further ordered that Fair must file a completed IFP application on the Court's  
5 form by October 2, 2020, and must include: (1) a financial certificate signed by Fair and  
6 an authorized prison official; (2) Fair's financial acknowledgement and declaration; and  
7 (3) a copy of his inmate account statement for the six-month period prior to filing.  
8 Alternatively, Fair must pay the \$5 filing fee by October 2, 2020.

9           It is further ordered that Fair must file an amended petition on the Court's form by  
10 October 2, 2020.

11           It is further ordered that initial screening and consideration of Fair's Motion for  
12 Appointment of Counsel (ECF No. 1-2) are deferred until he files an amended petition and  
13 resolves the filing fee.

14           It is further ordered that Fair's failure to comply with this Order on or before the  
15 October 2, 2020 deadline: (a) by submitting a completed IFP application with the required  
16 documents or paying the filing fee; or (b) by amending the petition, will result in the  
17 dismissal of this action without prejudice and without further advance notice.

18           DATED THIS 18<sup>th</sup> day of August 2020.

19  
20  
21             
22           MIRANDA M. DU  
23           CHIEF UNITED STATES DISTRICT JUDGE  
24  
25  
26  
27  
28